

REMARKS

Claims 22-30 are pending in the application.

At the outset, applicants draw the Examiner's attention to the Information Disclosure Statement filed via facsimile on January 4, 2005 by the undersigned while still with the the prior law firm, Akin Gump Strauss Hauer & Feld, LLP. Applicants do not have a copy of an initialed PTO Form SB/08A from the Information Disclosure Statement back from the Examiner and respectfully request that the Examiner provide the initialed copy of that form for the applicants' records. If a copy was already provided and lost in mailing, applicants apologize for any inconvenience this request may cause the Examiner.

Claims 22 and 25-30 have been amended. Claim 22 has been amended to partially incorporate certain of the language of canceled claim 31 and in accordance with the language in the specification to clarify the nature of the abraded features formed in the cargo carrier of the claimed invention. Support for this amendment may be found in canceled claim 31 as well as in the specification, at least at page 9, paragraph [0032]. Claims 25-30 have been amended to correct their dependencies to depend from claim 23 (in the case of claims 25-27) instead of claim 22 and to depend from claim 22 (in the case of claims 28-30) instead of previously canceled claim 21. No new matter has been added by the amendments.

The Examiner has rejected claims 25-27 under 35 U.S.C. § 112, second paragraph as being indefinite. Claims 25-27 were originally intended to depend from claim 23, and not claim 22 and the dependencies provided were the result of typographical error (as were the incorrect dependencies in claims 28-30 which now depend from claim 22 instead of claim 21). As a result of these claim corrections, the issues the Examiner has raised with respect to lack of antecedent basis for claims 25-27 should be alleviated.

Applicants thank the Examiner and acknowledge the withdrawal of the prior rejection of the pending claims as anticipated by U.S. Patent No. 4,693,507 of Dresen et al. ("Dresen"). However, claims 22-31 have now been rejected under 35 U.S.C. §103(a) as unpatentable over Dresen in view of U.S. Patent No. 4,336,293 of Eiden ("Eiden").

Applicants traverse the Examiner's new rejection of claims 22-31 under § 103(a) and the arguments in support thereof, and request reconsideration and withdrawal of the rejection.

The Examiner has alleged that Dresen discloses a motor vehicle cargo carrier comprising a co-formed composite sheet having a first layer 84 of a first thermoplastic material and a second

layer 16 of a second thermoplastic material bonded thereto. The sheet is described by the Examiner as formed so as to define a pair of opposed, spaced apart sidewalls, a front wall extending between and merging with the sidewalls, a bottom panel and a pair of wheel well features. The Examiner further recites the various dependent features as also being present in Dresen at page 3 of the Office Action of September 6, 2005. The Examiner acknowledges that Dresen does not teach a roughened, friction-enhancing surface, but cites to Eiden for this feature. The Examiner takes the position that Eiden discloses a floor mat having a sheet with at least one layer of a thermoplastic material, which has an upper surface a portion of which is a "roughened, friction enhancing surface having grooves or depressions abraded therein." See Office Action of September 6, 2005.

The Examiner must establish three key requirements in order to establish a case of *prima facie* obviousness under 35 U.S.C. § 103(a). There must be some suggestion or motivation in the prior art to combine the cited references. The combination must provide a basis for a reasonable expectation of success. Finally, the prior art references as combined must teach or suggest all elements of the claims. The teaching or suggestion to combine the references and the reasonable expectation of success must both be found in the cited prior art, and not inferred from applicants' specification. See generally M.P.E.P. §§ 2142-43 (August 2004).

One of ordinary skill in the art at the time of the invention would not have been motivated to combine Dresen with Eiden to successfully produce the claimed invention. Dresen provides a truck bed liner having an anti-slip surface provided by an anti-slip layer having a coefficient of friction that is higher than that of the typical material used to form a truck bed liner (i.e., high density polyethylene (HDPE)). Eiden is directed non-slip rubber polyvinyl chloride (PVC) mats for use in restaurants that has channels in the surface for redirecting grease and liquid that can interfere with adhesives typically used to adhere such mats to the floor. Dresen applies an upper non-slip layer of a resin having a higher coefficient of friction to provide anti-slip properties to the surface of an HDPE truck bed liner. Eiden does not need such a layer, and in fact teaches away from use of such a layer, since the mat which Eiden seeks to improve is provided with anti-slip properties by gluing abrasive grains on the top surface of the Eiden mat, not from embossing the mat with the drainage channels noted above. Thus, Eiden and Dresen provide different non-slip characteristics to two different products, acting in two different environments and formed of two different materials.

Dresen is a technique for providing anti-slip surfaces to HDPE truck bed liners without using adhered grains or the like and focuses on providing an upper layer of an elastomeric such as ethylene vinyl acetate or thermoplastic rubber resin to provide a desired coefficient of friction (col. 4, lines 26-45). As a result, there is no need for one of ordinary skill in the art to provide a further or alternative technique of abrasive grains to achieve a desired coefficient of friction. Further, adapting Eiden's teaching of embossing drainage channels in Dresen would also not be necessary, since Dresen already suggests that U-shaped longitudinal corrugations 22 can be provided to the truck bed liner (col. 2, lines 63-65).

Thus, Eiden adds nothing to Dresen that one of ordinary skill in the art would find necessary to improving the teaching of Dresen. Dresen, likewise, provides nothing other than an alternative method of providing a non-slip surface to floor mats to Eiden. The combination actually as a result teaches away from itself by providing alternative techniques to the same problem of providing a non-slip surface.

Even if one were to combine the two references, which is not suggested as noted above, the combination would not teach or suggest the present invention. The bed liner of Dresen is intended to be the bottom or floor surface on which cargo is stowed in the back of a vehicle bed, such as a truck bed. The surface requirements there are to provide a truck bed liner which is sufficiently non-skid to prevent sliding of materials while in transit, yet cannot be so slip-resistant that it is difficult to slide cargo from the back of the vehicle (see Dresen, col., 1, lines 40-63). Such goal is allegedly achieved in Dresen through its non-slip EVA or thermoplastic rubber upper layer. Eiden, on the other hand, is directed to solving two problems - (1) providing an anti-slip surface for people walking on a mat (not necessarily the same criteria as Dresen's goal) by providing abrasive grains glued to the upper surface and (2) providing a way to avoid penetration of grease and liquid into the mat which interfere with the adhesives used to glue such mats to the floor by providing drainage channels.

Neither Dresen nor Eiden teaches an upper surface of which at least a portion is roughened and friction enhancing and which has irregular, aligned grooves or elongate depressions abraded therein to provide such properties. The channels in Eiden are not for providing anti-slip properties or the adhesive grains would not be necessary. Further, the Dresen anti-slip layer is achieving anti-slip properties due to the nature of the materials used to form the surface - not due to any abrasion of the surface to form such grooves or depressions. The

Application No. 10/773,711
Reply to Office Action of September 6, 2005

claimed invention uses a brush or similar device to carve grooves or depressions, similar to furrows in a field, but somewhat more irregular into the surface at a desired depth sufficient to provide unique friction properties to the upper surface of a truck bed liner. Neither of the cited references teaches or suggests this feature.

The cited combination further does not provide a basis for a reasonable expectation of success, since the PVC abrasive grain anti-slip mat of Eiden having drainage channels therein does not suggest that an alternative anti-slip effect for the bed liner of Dresen could be achieved by using drainage channels (especially since corrugations are already present in Dresen) and/or by using abrasive grains. Neither suggests that an anti-slip bed liner can be formed by abrading the surface of a bed liner using a wire brush or similar device to form irregular, aligned grooves or elongate depressions in the upper surface thereof.

Based on the foregoing, applicants respectfully submit that the Examiner has not established *prima facie* obvious of claims 22-30 over the combination of Dresen and Eiden.

In view of the foregoing, applicant submits that claims 22-30 comply with 35 U.S.C. §112 and are patentable over the references cited by the Examiner in support of rejection. Withdrawal of the rejection and a Notice of Allowance are respectfully requested.

Respectfully submitted,

JOHN C. MONTAGNA ET AL.

3/14/06
(Date)

By:


LYNDA L. CALDERONE

Registration No. 35,837

FLASTER/GREENBERG P.C.

Commerce Center

1810 Chapel Avenue West

Cherry Hill, NJ 08002

Telephone: 856-661-1900

Direct Dial: 856-382-2206 or 215-279-9375

Facsimile: 856-661-1919

E-Mail: lynda.calderone@flastergreenberg.com

LLC:llc

Enclosures: Petition for Extension of Time (in duplicate); payment of fees; Information Disclosure Statement and SB/08A form; Request for Continued Examination (in duplicate)